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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1263

WILLIAM WILK, et al. and HARVEY SMITH, et al.,
Petitioners,

v.

YELLOW FREIGHT SYSTEM, INC., et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

BRIEF IN OPPOSITION

For Respondents, Truck Drivers Local Union 407 and Joint Council 41

JURISDICTION

The jurisdictional requirements are adequately set forth in the Petition.

QUESTION PRESENTED

Absent a finding in fact by the District Court of bad faith, hostility of purpose, discrimination or arbitrariness on the part of the Respondent, Local 407, should this Court grant a Writ of Certiorari when there has been a final and binding decision by an arbitral body on the merits of Petitioners' grievances?

STATUTES INVOLVED

The relevant provisions of 29 U.S.C. Section 185(a) are correctly set forth in the Petition.

STATEMENT OF THE CASE

The following statement is in supplement to the Statement of the Case set forth in the Petition.

Subsequent to the purchase by Yellow Freight System of the operating rights of Norwalk of Delaware, Division of Norwalk Truck Lines, Inc., grievances were filed by Norwalk drivers concerning their placement on the newly formed seniority roster below Yellow Freight drivers. The interests of the grievants were taken before an arbitral-type body, the Joint Area Committee, Change of Operations Committee, duly designated in the Collective Bargaining Agreement between the parties, Yellow Freight and Teamsters Local Union 407. The grievance was class-like in nature since it involved one legal question, namely, was the placement of the former Norwalk drivers on the newly formed Yellow Freight seniority roster proper? This affected all of the Norwalk drivers alike, that is, a legal determination by the Committee on the legal issue presented by the grievance would affect all of the Norwalk drivers alike. There could not be various or different applications by the Committee of the principles of seniority to different Norwalk drivers since there was a uniform principle presented affecting all Norwalk drivers alike.

Two (2) of the Norwalk drivers, who were representative of all of the drivers, were notified and were present at the hearing before the Committee. One (1) of the drivers present had written a grievance. Both of the drivers present were Plaintiffs in the action brought in District

Court and are Petitioners here. At the hearing before the Committee both drivers presented their views. At no time were they prevented from arguing the views representing the general issue of the seniority placement of the Norwalk drivers.

The composition of the Committee was pursuant to the Collective Bargaining Agreement between the parties as pointed out in the Petition. The bargaining representative for the Norwalk drivers, Teamsters Local Union 407, a Respondent herein, presented its arguments relating to how Yellow Freight had placed the Norwalk drivers, and also specifically requested the Committee to clarify the nagging seniority question for all time.

After having listened to all of the statements, arguments and counter-statements by the participants, Yellow Freight, the grievants present and their bargaining representative, Teamsters Local Union 407, the Committee convened an executive session, discussed the case and unanimously decided against the Norwalk drivers' claims. The Committee specifically applied the Ohio Past Practice to the universal issue before it. No bias, prejudice or untoward conduct of the Committee was present, and, indeed, none of the Petitioners ever raised such allegations, including "a neutral attitude," in the Court below.

ARGUMENT

1. It would appear that important reasons must exist for the Court to re-examine its former decision which has established guidelines for both labor and management in the area of grievance adjustment. Counsel for the Petitioners would have this Honorable Court re-examine *General Drivers, Warehousemen and Helpers Local 89, et al.* v. *Riss and Company, Inc.*, 372 U.S. 517 (1963), and *Humphrey* v. *Moore*, 375 U.S. 335 (1964), yet no cogent reasons are presented to the Court. Counsel suggests that a re-examination is necessary to assure that persons "receive a fair and impartial determination of their rights" (Petition for Writ of Certiorari, page 5). Such reasoning necessarily involves the *fact pattern* of a particular case to determine the procedural impropriety, if any. The Court has already given guidelines and formularization to determine whether union representation was "fair and impartial". See *Vaca* v. *Sipes*, 386 U.S. 171 (1967). The reasoning thus assigned to support the requested re-examination of this Court by Petitioners goes to the merits of a particular case. Of course, this is far from sufficient to exhume an established principle by the Court. A re-examination of *Riss* will not provide any light on whether a particular proceeding was "fair or impartial". Moreover, the District Court correctly decided that the Union (Local 407) was guilty of no impropriety in representing the Petitioners. This decision below correctly applied the law as it exists with respect to arbitral decisions. In the absence of bad faith, arbitrariness of purpose, discrimination and hostility of motive, *Vaca*, an arbitral decision cannot be disturbed. Not once did the Petitioners ever claim that there was a procedural impropriety at their hearing. Only now is it raised by conclusion without any supporting reason or documentation.

There is no dispute among the Circuits concerning the principal enunciated by *Riss*. Moreover, it is well established that when parties to a labor agreement have agreed to submit disputes to a grievance-arbitration procedure, a decision or settlement arising from such a proceeding is final and binding and dispositive of the issues. Any other result would work havoc upon labor relations and have disastrous effects upon interstate commerce. This is especially true in the trucking industry. *Riss* (1963) supra; *United Steel Workers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 374 (1960), and the "Steel Workers Trilogy" generally.

Likewise, it is well settled that the federal courts have held, absent problems concerning a breach of duty to fairly represent, grievances decided by agreed-upon joint committees as a part of the grievance procedure in the Teamster multi-employer area agreements, are final and binding upon the parties, and merits may not be weighed by the courts. *Teamster Local Union 745, et al.* v. *Braswell Motor Freight*, 392 F. 2d 1, (CA5, 1968); *Local Freight Drivers, Local 208, et al.* v. *Braswell Motor Freight Lines, Inc.*, 422 F. 2d 109, (CA9 1970); *Williams* v. *Pacific Motor Trucking Company, et al.*, —— Fed. Supp. ——, 64 Labor cases, paragraph 11,471 (1971 USDC, ND Calif.).

In sum there is no new or novel issue presented by the Petitioner for Writ of Certiorari which has not already been well ingrained by documented decisions of the federal courts treating the issue. Moreover, there is unanimity among the courts treating issues concerning the capacity, procedurally and substantively, of the Teamster-type grievance procedure.

* * *

2. The next reason advanced why the Court should accept the Petition for Certiorari is that "Criteria should

be established for determining the adequacy of the grievance proceeding." (Page 6, Petition for Writ of Certiorari). Without examining Petitioners' reasoning at this juncture, it is sufficient to say that this Honorable Court already has established criteria. This Court in *Vaca* v. *Sipes*, supra, has laid down the guidelines to determine fair representation. Such criteria include both substantive and procedural conduct of the labor representative. Thus, Petitioners are raising nothing new which *Vaca* has not covered.

For example, Petitioners suggest that the "attitude of grievant's statutory bargaining agent" should bear on procedural adequacy. First off, this *entire* general issue squarely was before the District Court and was decided correctly by Judge Green. The District Court succinctly found that (page 11, Brief for Certiorari):

> "The record clearly requires a finding that Local 407 did not breach its duty of fair representation. Considering the unrebutted affidavit and exhibits, it appears therefrom that the said Defendant *pursued* the grievances presented to it in a *reasonable and proper manner.*" (Emphasis added.)

Clearly, Petitioner here attempts to have the Court add another ingredient to the established guidelines in *Vaca*, namely, that of vigorous representation. Such an enlargement upon *Vaca* is unreasonable. First, such a requirement would be too subjective and incapable of measurement. What one man might think about a labor representative's presentation might cause another to cry in despair. The representative's grievance presentation would be left to the mercy of nitpicking, disenchanted employees. Next, such a requirement as urged upon the Court would work an intolerable hardship among fair, honest but less articulate

union agents. The imposition of an A.C.L.U. type of jury argument would be totally foreign to the concept of basic, honest representation in a labor arbitration. This suggestion by Petitioners is totally unrealistic when viewed against the backdrop of practical day-by-day labor representation by those chosen from the ranks of the workers by the workers, themselves.

Next, Petitioner suggests to the Court that a union in presenting the grievance cannot remain neutral. (Brief, page 7). Indeed, the Court in *Bieski* v. *Eastern Automobile Forwarding Co.*, 396 F. 2d 32 (CA3, 1968), decided to the contrary when it held in some cases neutrality might be the only practical position to take. But as we have pointed out the Union's (Local 407) conduct *was* before Judge Green and was held correctly to be fair and reasonable. Local 407 cannot be faulted when it asked the Committee to clear up the vexatious seniority problem affecting all Norwalk drivers.

It would thus appear that no new or novel issue is presented.

We are at a loss to understand the quote allegedly from *Bieski* appearing on page 7 of the Petitioner's Brief. We respectfully suggest there may be a typographical error. Petitioner probably meant a lack of successful opposition between the parties. A committee, having adjudicatory functions must *necessarily* be neutral! In any event, any alleged procedural impropriety on the part of the Committee would be the subject matter of a different proceeding. The case below was predicated on an alleged unfair representation of Petitioners by their bargaining representative, Teamsters Local 407. The lower courts correctly held that the Union was not guilty of such allegations. If Petitioners wish now to raise for the first time alleged procedural impropirety, i.e., "a neutrality", on the part of

the Committee, such claim should have been made in an action addressed to such allegations. And the allegations are correctly a part of a separate cause of action.

NOTE: The District Court properly sustained Respondent, Joint Council 41's, Motion for Summary Judgment. The Joint Council was not involved at all in the fact situation forming the action below. Moreover, Petitioner fails to mention the Joint Council in their Brief before this Court.

Last. The questions before the Committee were one of law common to all of the employees of Norwalk who were placed at the bottom of the seniority list of the acquiring Company, Yellow. Such employees were the Plaintiffs below. Two (2) of the Plaintiffs, including a grievant, were present and participated in the Joint Area Change of Operations hearing. The issues of law presented concerned an interpretation of the "Ohio Practice" as such related to the placement of employees in acquisition cases. Such a question was common to all of the Norwalk drivers. A decision could only have affected the drivers in one way. There could not have been a variety of decisions with regards to seniority applications. We suggest that a lack of notification on all members of the class affected is not reversible error since there was no issue of fact to be decided and since there was a uniform application of a seniority principle involved. The only question was one of applicability of how seniority would be determined in an admitted purchase of Norwalk by Yellow. In any event the total Union conduct was correctly adjudicated to be fair and reasonable by the District Court. If lack of notice on all parties is seen to be a procedural defect it cannot be so defective as to allow Certiorari. The presence of all, assuming notice, would have lent nothing to the type of legal determination presented to the Committee since all of

the drivers were affected in the same manner. Moreover, representatives of the interests of all drivers *were* present and *did* argue and participate.

In conclusion, the second point in favor of Certiorari does not present new and novel issues to the Court raising points not heretofore established by prior decisions of this Court, namely, *Vaca* and *Humphrey* v. *Moore*.

CONCLUSION

For the foregoing reasons we respectfully request that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

October Term, 1972

No. A-68 72-1263

WILLIAM WILK, *et al.* and HARVEY SMITH, *et al.*
Petitioners,

vs.

YELLOW FREIGHT SYSTEM, INC., *et al.*,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

October Term, 1972
No. A-684

WILLIAM WILK, *et al.* and HARVEY SMITH, *et al.*
Petitioners,

vs.

YELLOW FREIGHT SYSTEM, INC., *et al.*,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

JURISDICTION

The jurisdictional requirements are accurately and adequately presented to the Court in the Petition for Writ of Certiorari.

QUESTIONS PRESENTED

Respondent, Yellow Freight System, Inc., agrees with and adopts the statement of the Questions Presented as set forth in the Brief in Opposition for Respondents, Truck Drivers Local Union 407 and Joint Council 41.

STATUTES INVOLVED

The Petition accurately and adequately presents the relevant portions of the statute involved, to wit: 29 U.S. C.A. Section 185 (a).

STATEMENT OF THE CASE

Respondent, Yellow Freight System, Inc., agrees with and adopts the Statement of the Case as set forth in the Petition herein, as modified and supplemented in the Brief In Opposition for Respondents, Truck Drivers Local Union 407 and Joint Council 41.

LAW AND ARGUMENT

Before a party is entitled to review by writ of certiorari he must show compelling reasons for such review. Petitioners in the instant proceeding have presented nothing which is of such a compelling nature, which has prompted disagreement among the Circuit Courts, or which is of such a new and novel nature, as to be entitled to the relief sought before this Court.

Far from there being compelling reasons to grant the writ prayed for, there are overwhelming reasons *not* to grant the writ. Respondent specifically, and all major interstate trucking firms generally, have, in accordance with its statutory duty, bargained in good faith with the exclusive bargaining representative of its employees and has arrived at collective bargaining agreements which include provisions for the processing and final and binding settlement of *all* grievances arising under the terms of those Agreements. The disposition of grievances under this Teamster-type (Joint Employer-Union Committees) grievance procedure has been approved by this Court as within the framework contemplated by the "Steelworkers

Trilogy" [363 U.S. 564, 574, 593 (1960)]. *General Drivers, Warehousemen & Helpers Local 89, et al. v. Riss & Company, Inc.*, 372 U.S. 517 (1963).

This joint Employer-Union Committee type of grievance machinery is utilized throughout the trucking industry. It is the accepted method of dispute settlement by both employers and local unions alike. It has been approved by every reviewing court that has had occasion to examine its operation, e.g. *Price v. Teamsters*, 457 F.2d. 605 (3rd Cir., 1972). The duty of the employee representatives under such a grievance procedure is well established in the federal law. *Vaca v. Sipes*, 386 U.S. 571 (1968), *Humphrey v. Moore*, 375 U.S. 335 (1964). Briefly stated, there must be some showing that a union is guilty of hostile discrimination or arbitrary, capricious or discriminatory misconduct toward an employee or group of employees.

To urge as Petitioners do in the instant case that each dispute resolved under the applicable grievance procedure should be subject to review on the questions of the fairness and adequacy of the proceedings without the showing required by *Vaca v. Sipes, supra*, is to urge the destruction of the confidence of the parties to collective bargaining agreements in the trucking industry and the undermining of the consequent labor stability arrived at through years of bargaining. This result is the antithesis of the philosophy of the National Labor Relaitons Act of 1947, as amended, to foster the stability of labor-management relations.

In addition, and of most importance to an employer, imposition of the review standard urged by Petitioner would necessarily require an employer to delve into internal union matters before reaching an agreement with a union whenever the agreement could be detrimental to one or a group of employees represented by the union.

While an employer can and should be aware of deviations by a union from *Vaca v. Sipes* standards, the standards urged by Petitioner would substantially modify and enlarge the long established obligation of an employer in dealing with a duly recognized collective bargaining representative. Such a modification and enlargement should not be lightly undertaken and Petitioners have presented no cogent reasons why such action should be undertaken in this case.

Labor-management bargaining sessions and grievance disputes are not court room arguments or high school debates and the procedures evolved for these latter two arenas are not applicable or appropriate here. Since different circumstances exist, different proceedings and standards also must exist. Petitioners' interests are adequately protected by the standards of *Vaca v. Sipes* and *Humphrey v. Moore, supra.*

> "The complete satisfaction of all who are represented is hardly to be expected. A wide range or reasonableness must be allowed the statutory bargaining representative in serving the unit it represents subject always to complete good faith and honesty of purpose in the exercise of its discretion . . . Conflict between employees represented by the same union is a recurring fact." *Humphrey v. Moore, supra.*, p. 349.

If an employer and a union are not free to decide between conflicting interests of groups of employees through a recognized procedure with the assurance that their decision will be upheld in a court of law, collective bargaining will be set back many years and the stability of labor-management relations intended to be fostered by the Act will be irreparably retarded.

CONCLUSION

In view of the foregoing, therefore, Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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